



# Non-Fatal Strangulation/Suffocation

## *What Every Judge Should Know*

A person who has suffered a non-fatal strangulation by an intimate partner is 750% more likely to be killed by that partner.<sup>1</sup> In almost every lethality assessment, strangulation is a high-risk factor for lethality. The most dangerous domestic violence offenders strangle their victims. The next step may be homicide.<sup>2</sup>

### Non-Fatal Strangulation/Suffocation [R.C. 2903.18]

“*Strangulation*” or “*suffocation*” means any act that impedes the normal breathing or circulation of the blood by applying pressure to the throat or neck, or by covering the nose and mouth.

Strangulation or suffocation occurs when a person *knowingly*:

Prohibited Action	Harm Caused	Offense
Causes [R.C. 2903.18(B)(1)]	Serious physical harm	2 <sup>nd</sup> degree felony
Creates a substantial risk of [R.C. 2903.18(B)(2)]	Serious physical harm	3 <sup>rd</sup> degree felony
Causes or creates a substantial risk of [R.C. 2903.18(B)(3)]	Physical harm	<ul style="list-style-type: none"> <li>5<sup>th</sup> degree felony if the victim is not a family/household/dating relationship*</li> <li>4<sup>th</sup> degree felony if the victim is a family/household/dating relationship*</li> <li>3<sup>rd</sup> degree felony if victim is a family/household/dating relationship* and the offender has a prior conviction to a felony offense of violence</li> <li>3<sup>rd</sup> degree felony if victim is a family/household/dating relationship* and the offender knew the victim was pregnant</li> </ul>

\*Family/household/dating relationship: Family or household member or a person with whom the offender is or was in a dating relationship with as defined in R.C. 2903.18(A).

The offender may raise an affirmative defense if the act was part of a medical or other procedure undertaken to aid or benefit the victim. [R.C. 2903.18(D)]

1 Glass, N., Laughon, K., Campbell, J., Block, C. R., Hanson, G., Sharps, P. W., & Taliaferro, E. (2008). *Non-fatal strangulation is an important risk factor for homicide of women*. Journal of Emergency Medicine, 35(3), 329-335. <https://doi.org/10.1016/j.jemermed.2007.02.065>.

2 Campbell, *Danger Assessment* (2019) [www.dangerassessment.org/uploads/DA\\_NewScoring\\_2019.pdf](http://www.dangerassessment.org/uploads/DA_NewScoring_2019.pdf) (accessed Aug. 7, 2024) [<https://perma.cc/8K27-8KWB>].

## Terminology

### Serious Physical Harm [R.C. 2901.01(A)(5)]

Even prior to the enactment of the R.C. 2903.18 (“the strangulation statute”), courts have found sufficient evidence of “serious physical harm” under R.C. 2901.01 (A) (5) where the victim’s injuries were consistent with the harm caused by what is now defined as strangulation.<sup>3</sup>

The definition of “*serious physical harm*” in R.C. 2901.01 (A) (5) includes but is not limited to:

- Any physical harm that carries a substantial risk of death;
- Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity; or
- Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

Courts have found that the following has constituted serious physical harm:

- Loss of consciousness;<sup>4</sup>
- Petechia, bruising, burst blood vessels, subconjunctival hemorrhage (in the eye), and “seeing stars”;<sup>5</sup>
- Suffocation;<sup>6</sup> and
- Burst capillaries in eye, air embolus in throat, admitted to hospital.<sup>7</sup>

*Many court participants and victims use the word “choke” rather than the correct legal and medical term “strangulation.” Judges should focus on the facts described rather than the terminology used.*

### Physical Harm [R.C. 2901.01(A)(8)]

“Physical harm” is any injury, illness, or other physiological impairment, regardless of its gravity or duration.

### Substantial Risk [R.C. 2901.01(A)(8)]

“Substantial risk” means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.<sup>8</sup>

3 *State v. Stevens*, 2021-Ohio-2643, ¶ 94 (11th Dist.), citing *State v. Stillman*, 2004-Ohio-6974, ¶ 22-28 (5th Dist.); *State v. Smith*, 2007-Ohio-5524, ¶ 26-27 (9th Dist.); *State v. Simmons*, 2011-Ohio-6074, ¶ 34-39 (8th Dist.); *State v. McCoy*, 2020-Ohio-4511, ¶ 78-81 (3rd Dist.).

4 “...[I]t is established that strangling a person to the point of unconsciousness is serious physical harm.” *State v. Ryan*, 2019-Ohio-5339, ¶ 26 (8th Dist.), citing *State v. Dozier*, 2017-Ohio-4173, ¶ 31 (5th Dist.); *State v. Chambers*, 2014-Ohio-390, ¶ 19, 23 (8th Dist.); *Simmons* at ¶ 37-38; *Smith* at ¶ 27. (Strangled repeatedly, to point of urination.)

5 *State v. George*, 2021-Ohio-2708 (6th Dist.); *Smith*.

6 “Courts have determined that suffocation constitutes ‘serious physical harm.’” *Stevens* at ¶ 89 citing *State v. O’Neal*, 2009-Ohio-5290, ¶ 36 (5th Dist.). (“We find that holding a pillow over a victim’s face in an attempt to suffocate him amounts to an attempt to cause serious physical harm.”)

7 *State v. Harmon*, 2013-Ohio-1769 (9th Dist.).

8 *Smith*, 2007-Ohio-5524, at ¶ 27 (9th Dist.). (The evidence showed strangulation “caused a substantial risk of death or, minimally, a substantial risk of temporary incapacity.”)

## Determining Harm Caused by Strangulation

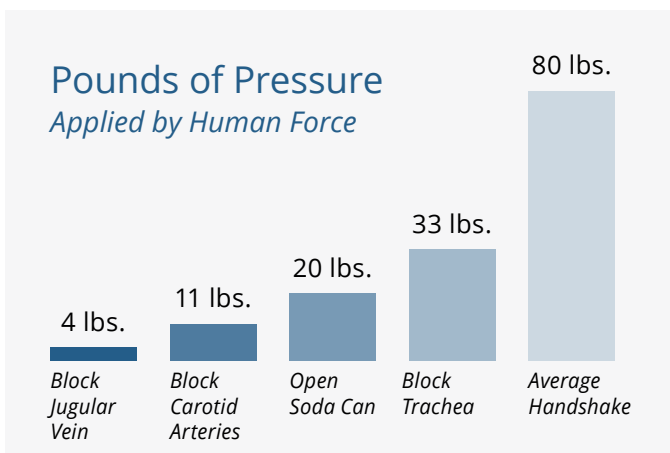
The harm caused by strangulation or suffocation is easily underestimated.

### Strangulation Can Happen Fast

A strangulation victim can become unconscious in 5-10 seconds and die within minutes.<sup>9</sup>

### Strangulation Does Not Require Much Pressure

Very little pressure is needed to block off vital structures in the neck. It takes only four pounds of pressure to block the jugular vein, 11 pounds of pressure to block the carotid arteries, and 33 pounds of pressure to block the trachea. By comparison, opening a can of soda requires 20 pounds of pressure.<sup>10</sup>

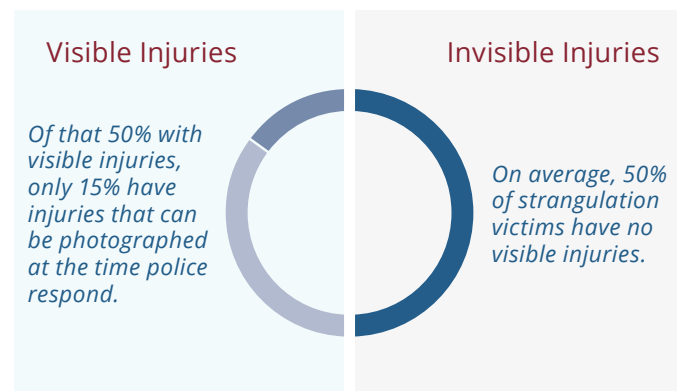


## Lack of Visible Injuries – Unseen Injuries

Despite its inherent danger, the seriousness of strangulation is frequently underestimated. When considered alone, the lack of observable physical injuries may cause justice partners and victims themselves to minimize the seriousness of strangulation. **Lack of visible injuries does not necessarily mean there is no evidence a violation of R.C. 2903.18 occurred.**

In most cases of strangulation there will be few or no external injuries. Any external, observable injuries may be even less visible due to increased melatonin in the skin. It may seem counterintuitive that something so serious could cause no external injuries. However, it has been established that a person can die from strangulation with no visible injuries.<sup>11</sup>

### Visible and Invisible Injuries



- 9 Kabat, H. & Anderson, J.P. (1943). Acute arrest of cerebral circulation in man: Lieutenant Ralph Rossen (MC). *Archives of Neurology & Psychiatry*, 50(5), 510-528. doi:10.1001/archneurpsyc.1943.02290230022002
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- 10 Armstrong, M., Jr, & Strack, G. B. (2016). Recognition and Documentation of Strangulation Crimes: A Review. *JAMA Otolaryngology-Head & Neck Surgery*, 142(9), 891-897. <https://doi.org/10.1001/jamaoto.2016.0293>.
- Kornblum, R.N. (1986). Medical analysis of police choke holds and general neck trauma (part 2), *Trauma*, 28(1), 13-64.
- 11 Clarot, F., Vaz, E., Papin, F., & Proust, B. (2005). Fatal and non-fatal bilateral delayed carotid artery dissection after manual strangulation. *Forensic Science International*, 149(2), 143-150. <https://doi.org/10.1016/j.forsciint.2004.06.009>.
- Strack, G., McClane, G., & Hawley, D. (2001). A review of 300 attempted strangulation cases - Part I: Criminal legal issues. *Journal of Emergency Medicine*, 21(3), 303-309.
- Taliaferro, E., Hawley, D., McClane, G. & Strack, G. (2009). Strangulation in intimate partner violence. In Mitchell, C & Aglin, D. (Eds.) *Intimate partner violence: A health-based perspective* (pp. 217-235). Oxford Academic. <https://doi.org/10.1093/oso/9780195179323.003.0016>.

## Brain & Neurological Impact

Strangulation and suffocation are forms of asphyxia that deprive the victim's brain of oxygen. Millions of brain cells die every second the oxygen is reduced. The consequences of this include, but are not limited to, loss of memory, inability to concentrate, behavior changes, brain damage, and difficulty speaking. Effects may be evident short- or long-term.<sup>12</sup> *Justice partners should not expect the victim to always be capable of describing this near-death experience calmly and chronologically.*

## Non-Fatal Strangulation in Court

### Arraignment/Initial Appearance/Setting or Denying Bail

Given the seriousness, courts might expect requests for no-bond hearings per R.C. 2937.222 on R.C. 2903.18 cases and requests for protection orders.

Moreover, courts are required to consider whether the case involved strangulation when setting bail on offenses of violence against family or household members. R.C. 2919.251 requires the court to consider “[t]he severity of the alleged violence that is the basis of the offense, including but not limited to, the duration of the alleged violent incident, and whether the alleged violent incident involved serious physical injury, sexual assault, **strangulation...**” before setting bail.

## Fact Witness/Expert Witness

Because injury in non-fatal strangulation cases is often hidden/internal, a witness will typically be called to testify as to the nature of injuries observed and whether such injuries are consistent with strangulation. These witnesses may be fact witnesses that will relate what they observed, expert witnesses who give an opinion, or both. If offering an expert, the proponent of expert testimony must comply with Crim.R. 16(K) or Civ.R. 26(B)(7).

The following have been qualified as experts under Evid.R. 702:

- Sexual assault nurses, forensic nurses,<sup>13</sup>
- Law enforcement officers,<sup>14</sup> and
- Advocates.<sup>15</sup>

## Recantation

Victims of domestic violence often recant. This may be due to many reasons, including intimidation, which research shows occurs in many domestic violence cases.<sup>16</sup> Ensure that victims are linked with a domestic violence advocate who can speak in private about threats and intimidation. If intimidation has occurred, the evidentiary principle of forfeiture by wrongdoing may apply and allow for admission of hearsay statements. Evid.R. 804(B)(6). Also, a witness may be called as the court's witness pursuant to Evid.R. 614.

12 Armstrong M. Jr. & Strack, G.B. (2016). Kornblum, R.N. (1986).

13 *State v. Reed*, 2021-Ohio-858 (5th Dist.).

14 *State v. O.A.B.*, 2020-Ohio-547 (10th Dist.); *State v. Jenkins*, 2021-Ohio-1978 (5th Dist.).

15 *State v. Baughman*, 2014-Ohio-1821 (5th Dist.).

16 Aequitas, *Witness Intimidation: Meeting the Challenge* (2013), p. 7, 25533\_Monograph Cover.pdf (aequitasresource.org) (accessed Aug. 16, 2024) [<https://perma.cc/8GFT-HPGH>] citing Robert C. Davis, Barbara E. Smith, and Madeline Henley, *Victim/Witness Intimidation in the Bronx Courts: How Common Is It, and What Are Its Consequences*, Davis\_etal\_1990.pdf (asu.edu) (accessed Aug. 16, 2024) [<https://perma.cc/4ZBU-SUJT>]. In the 1990 Bronx study by Davis, et al., of 136 victims who were interviewed, 41% of these victims reported they had been threatened, or otherwise discouraged from testifying, at some time during the course of the case.

## Additional Considerations

Trauma will affect the ability to recall exact details.

The following could indicate a strangulation occurred (although the absence of the signs/symptoms does not necessarily indicate a strangulation did not occur):

- The incident resulted in the victim having a sore throat;
- The victim experienced voice changes or have trouble speaking;
- The victim had trouble breathing or swallowing;
- The victim had any vision changes;
- The victim lost consciousness, however briefly (the victim may not know);
- The victim had small red spots (petechiae) anywhere (eyeballs, eyelids, inside throat, scalp, behind ears, etc.);
- What the victim thought was going to happen;
- The victim had thoughts the incident would cause death;
- The victim had marks or bruises on their neck at the time of the assault, or after;
- The victim lost control of their bladder or bowels;
- Where the incident occurred;
- What the attacker said before, during, and after the incident;
- Whether the attacker used hands (one or two), or an object or ligature;
- How long the incident lasted (trauma may impact a victim's ability to tell time);
- Why/how the strangulation stopped.

*Judges may ask questions to clarify and elicit additional information.*

*Consider asking questions only after all parties have questioned the witness/victim.*

Evid.R. 614(B). See also, *State v. Skerkavich*, 2019-Ohio-4973 (8th Dist.)¶23. *City of Cleveland v. Mincy*, 2018-Ohio-3565 (8th Dist.). ¶33; *State v. Redon*, 2009-Ohio-5966 (8th Dist.) ¶8

## Restitution

In many strangulation cases, victims incur medical bills, counseling bills, loss of work, and destruction of property. A victim is entitled to restitution for these economic losses, and restitution should be addressed in strangulation cases.<sup>17</sup>

## Medical Attention

Strangulation victims often do not seek medical attention and may be unaware of any internal injuries. In the event the victim is exhibiting signs or symptoms of injuries consistent with strangulation a victim should be encouraged to seek medical attention.<sup>18</sup>



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<sup>17</sup> Ohio Const., art. I, § 10a(A)(7); R.C. 2929.28, 2929.281, and 2152.203.

<sup>18</sup> Alliance for HOPE International, *Strangulation Assessment Card*, (2018), <https://www.familyjusticecenter.org/wp-content/uploads/2018/09/Strangulation-Assessment-Card-v10.12.18.pdf> (accessed Aug. 16, 2024) [<https://perma.cc/D5N9-J32G>].